SUPREME COURT OF THE UNITED STATES.

No. 127.

LEWIS BISSELL, PLAINTIFF IN ERROR,

vs.

MARY B. PENROSE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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MISSOURI DISTRICT, *sct:*

MARY B. PENROSE
vs.
LEWIS BISSELL.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and forty-five, Mary B. Penrose, a citizen of the State of Louisiana, by Messrs. Goode and Cornick, her attorneys, filed in the office of the clerk of the circuit court of the United States for the district of Missouri her declaration in an action of ejectment against Lewis Bissell, a citizen of the State of Missouri, in the words and figures following, to wit:

Declaration.

ST. LOUIS COUNTY, *to wit:*

In the circuit court of the United States for the Missouri district.

MARY B. PENROSE
vs.
LEWIS BISSELL.

Mary B. Penrose, a citizen of the State of Louisiana, by attorney, complains of Lewis Bissell, a citizen of the State of Missouri, of a plea of trespass and ejectment. For that whereas the said Mary B. Penrose, heretofore, to wit, on the first day of June, in the year of our Lord eighteen hundred and forty, in the county of St. Louis, in the district of Missouri aforesaid, was, and thence hitherto hath been, and still is, entitled to the possession of a certain tract of land of great value, to wit, of the value of one hundred thousand dollars, situate, lying, and being in the township of St. Louis, in the county and district aforesaid, containing eight hundred arpens, said tract of land being known and designated among the surveys made by authority of the United States as survey number three thousand and sixty-one. And the said plaintiff being so entitled to the possession thereof, the said defendant, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, with force and arms, entered into the said tract of land and premises, with the appurtenances, to the possession whereof the said plaintiff is so entitled as aforesaid, and ejected the said plaintiff therefrom; and then and there unlawfully withheld, and thence hitherto did, and still doth, unlawfully withhold from the said plaintiff the possession thereof, and the use, occupation, and enjoyment thereof, whereby the said plaintiff, for and during all that time, lost, and was deprived of, the use and benefit of the said tract of land and premises, with the appurtenances, and of the issues and profits thereof, being of great value, to wit, of the monthly value of five thousand dollars, to wit, at the district aforesaid; and other wrongs to the said plaintiff then and there did, against the peace, and

to the damage of the said plaintiff of ten thousand dollars; and therefore she brings her suit, &c.

And thereupon, on the day of the filing of said declaration, a writ of summons issued out of the office of the clerk of said circuit court, in tenor and form following, to wit:

Summons.

MISSOURI DISTRICT, *sct:*

The President of the United States, to the marshal of the Missouri district, greeting:

You are hereby commanded to summon Lewis Bissell, a citizen of the State of Missouri, that he be and appear before the circuit court of the United States for the district of Missouri, at the next term thereof, to be held at the city of St. Louis within and for said district, on the first Monday of October next, then and there to answer unto Mary B. Penrose, a citizen of the State of Louisiana, of a plea of trespass and ejectment, to the damage of said plaintiff of ten thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United [L. S.] States, the 27th day of May, in the year 1845. Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clerk*.

And the marshal, to whom the same was directed, duly returned the said writ, with his return thereon endorsed as follows, to wit:

Marshal's return.

MISSOURI DISTRICT, *ss:*

I certify to the honorable circuit court of the above district, that I executed the within writ by reading the same, together with the declaration thereto attached, to the within named defendant, Lewis Bissell, at the county of Saint Louis and district aforesaid, on the 22d day of July, 1845.

ROBERT C. EWING,
U. S. Marshal for Missouri district.
By H. W. LEFFINGWELL, *Deputy*.

Plea.

And afterwards, to wit, at the October term of said court in the year aforesaid, the said defendant, by Messrs. Gamble and Bates, his attorneys, appeared and filed his plea to the action aforesaid, in the words following, to wit: And the said Lewis Bissell comes and defends the wrong and injury, when, &c.; and says that he is not guilty of the said supposed wrongs and grievances above laid to his charge, nor any of them, in manner and form as in said declaration is above supposed; and of this he puts himself upon the country.

And afterwards, to wit, at the April term of said circuit court, in the year one thousand eight hundred and forty-six, in the record of proceedings thereof are the following entries, to wit:

Trial.

Wednesday, 22*d April*, 1846.

MARY B. PENROSE
vs.
LEWIS BISSELL.

This day come the parties aforesaid, by their respective attorneys, and thereupon come a jury, to wit, Leven H. Baker, Thomas J. Simpson, William Lenox, Luther F. Warder, Frederick Branstetter, George M. Butler, Vachel Burgess, Isaac Green, Thomas W. Higgins, John McCutchen, John H. Freligh, Charles P. James, twelve good and lawful men, who were duly elected, tried, and sworn well and truly to try the issue within joined between the parties aforesaid. And the trial of this cause not being concluded at the hour of adjournment, further proceedings therein are continued until the meeting of the court to-morrow.

Thursday, 23*rd April*, 1846.

MARY B. PENROSE
vs.
LEWIS BISSELL.

Further proceedings in this cause are continued until the meeting of the court to-morrow.

Verdict.

Saturday, 25*th April*, 1846.

MARY B. PENROSE
vs.
LEWIS BISSELL.

This day come again the parties aforesaid, by their respective attorneys, and thereupon come again the jury aforesaid, who upon their oath do say: "We, the jury, as to the issue within joined, find the defendant guilty of the trespass and ejectment in the declaration mentioned, as to an undivided moiety of a tract of land containing fifty-five acres, parcel of the land and premises in the declaration mentioned, and of survey No. 3061. Bounded on the east by survey No. 2041, northwest by survey No. 658, south by a line three hundred feet north of the northern line of survey No. 3197, and southwest by part of survey No. 3061; and that the defendant is not guilty of the residue of the land and premises in the declaration mentioned. And we assess the damage of the plaintiff, by occasion of the trespass and ejectment aforesaid, at one cent; and we assess the monthly value of the undivided half of the tract of fifty-five acres aforesaid, at five dollars and seventy-two and a half cents."

Judgment.

It is therefore considered by the court here, that the said Mary B. Penrose recover against the said Lewis Bissell an undivided moiety of a tract of land containing fifty-five acres, parcel of survey No. 3061. Bounded on the east by survey No. 2041, northwest by survey No.

658, south by a line three hundred feet north of the northern line of survey No. 3197, and southwest by a part of survey No. 3061. And it is further considered that the said plaintiff recover against the said defendant her damage aforesaid in form aforesaid by the jury assessed, together with her costs and charges by her about her suit in this behalf expended, and that she have thereof execution.

Bill of exceptions filed.

MARY B. PENROSE,
vs.
LEWIS BISSELL.

Monday, 27th April, 1846.

And thereupon the said Lewis Bissell, plaintiff in error, as principal, and James Bissel as security, appear and acknowledge the execution of a bond to the said Mary B. Penrose, in the penal sum of five hundred dollars, to prosecute the writ of error in this cause with effect, and pay all damages that may be adjudged against him; which bond is by the court approved.

The bill of exceptions filed in this cause is in the words and figures following, to wit:

Bill of exceptions.—Plaintiff's evidence.

Be it remembered, that on the trial of this cause the plaintiff gave in evidence the notice of Rudolph Tillier, and documents filed therewith, and proceedings of the commissioners for adjustment of land titles thereon, in the following words and figures:

Proceedings of commissioners —Claim.

Rudolph Tillier gives notice to Jas. L. Donalson, recorder of land titles, that he claims to hold 800 arpens of land, distant two miles from the town of Saint Louis, being part of a grant to Benito, Antoine, Hypolite, Joseph, and Pierre Vasquez, for 4,000 arpens, by Charles Dehault Delassus, dated on the 17th of February, 1800, in recompense and as a reward of the services of Benito Vasquez, their father, to the King of Spain, and by said Benito, junior, assigned to this claimant.

Concession.

Don Charles Dehault Delassus, lieut. gov'r de la Haute Louisiane: Monsieur: Benito, Antoine, Hypolite, Joseph et Pierre Vasquez, tous fils de Don Benito Vasquez, capitaine de milice de cette ville, breveté par S. M. C., pleins de confiance en la generosité et aux bontés du gouvernement sous lequel ils sont nés, esperant qu'il vous plaira prendre en consideration la situation malheureuse dans laquelle ils se trouvent par le peu de moyens de leur famille que vit dans l'infortune depuis quelque tems, et qui est hors d'etat de leur faire donner une education necessaire, c'est pourquoi ils desirant de se procurer par la suite une existence indépendente en pensant à faire un etablissement qui puisse un jour leur assurer leur bien être, ils se flattent, Monsieur, que les services de leur père leur assurera votre protection, et que la bonté de votre cœur, vous portera à leur accorder leur demande, ils vous suppli-

ent en consequence de leur accorder à chacun d'eux 800 arpens de terre en superficie, faisant ensemble la quantité de 4000 arpens, lesquels ils desirent de prendre dans un ou plusieurs endroits sur les terres vacantes du domaine du Roi. Grace que le sup. osent esperer de votre justice.

St. Louis, 16th Fevrier, 1800.

BENITO VASQUEZ,
ANTOINE,
HYPOLITE,
JOSEPH, and
PIERRE VASQUEZ.

St. Louis de Illinois, à 17 de Fevrero, de 1800. V'to el exp't precedente y los laudables motivos qe. animan los suplicantes, y considerando que su familia es una de las mas ancionas del pays, y acredora à los beneficios del gobierno tanto por su merito personal que por los ancianos servicios del padre del suplicante, concedo al los supp'tes para los y sus herederos la tierra que solicita, si non perjudica à nadie, y el agrimensor Don Antonio Soulard pondra los interesados en posecion de la cantidad de tierra que pide en uno ô dos sitios vacantes del dom'o rl., loque evacuado formara plano, entregando à las partes este y certificacion, para que les sirve à obtener la concession y titulo en forma del sen'r intendente gen'l, à quien corresponde privativamente por rl. orden el repartir y conceder toda clase de tierras.

CARLOS DEHAULT DELASSUS.

Assignment.

This indenture, made this 11th day of February, in the year of our Lord 1806, between Benito Vasquez, of the town of Saint Louis, and territory of Lousiana, of the one part, and Rodolph Tillier, Camp Belle Fontaine, and said territory, of the other part, witnesseth: That the said Benito Vasquez, for and in consideration of the sum of $100 current money of the United States to him in hand paid, the receipt whereof, from the said Rodolph Tillier, he doth hereby acknowledge, and doth altogether release and acquit the said Rodolph *for* the payment thereof, or of any part thereof, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Rodolph Tillier, his heirs or assigns, all his, the said Benito's right, title, and interest, claim, pretension, and demand, in and to a certain tract of land not yet located or surveyed, granted to the said Benito by deed of concession bearing date the 17th day of February, 1800, containing 800 French acres, being by the express terms of said concession in consideration of various services rendered by the father of said Benito to the Spanish Government, for which he has received no manner of compensation; to have and to hold the said bargained premises and land, with the appurtenances, unto him, the said Rudolph Tellier, his heirs and assigns forever. And I, the said Benito, do hereby give full power, right, and authority unto the said Rudolph, his heirs and assigns, to have, demand, sue for, recover to and for his own proper use, the said

bargained and sold right, interest, and demand, in and to the said concession of 800 arpens aforesaid, from the United States of America, before the board of commissioners, or elsewhere, or otherwise at the pleasure of the said Rudolph.

In witness whereof the said parties have hereunto set their hands and affixed their seals *to* day and year above written.

BENITO. [SEAL.]

Signed, sealed, and delivered in presence of—
D. DELAUNY,
CLEMENT B. PENROSE.

DISTRICT OF ST. LOUIS, *sct:*

Before the subscriber, one of the judges of the court of common pleas of the district aforesaid, now appears Benito Vasquez, party to the above deed, who acknowledges the instrument of writing aforesaid to be his act and deed, and as such desires the same to be recorded.

Acknowledged before me, the day and year first above written.

D. DELAUNAY. [L. S.]

[*For plat, see original, page* 6.]

NOTE.—This land is about two miles northwest of St. Louis.

I do certify, that the above plat represents eight hundred arpens of land, French measure, situated in the district of St. Louis, Louisiana Territory, and surveyed by me at the request of the proprietor, who claims the same by virtue of a Spanish grant.

Given under my hand at St. Louis, this twenty-seventh day of February, in the year of our Lord eighteen hundred and six.

JAMES MACKAY.

Received for record, St. Louis, February 27, 1806.

ANTOINE SOULARD,
Surveyor General Territory Louisiana.

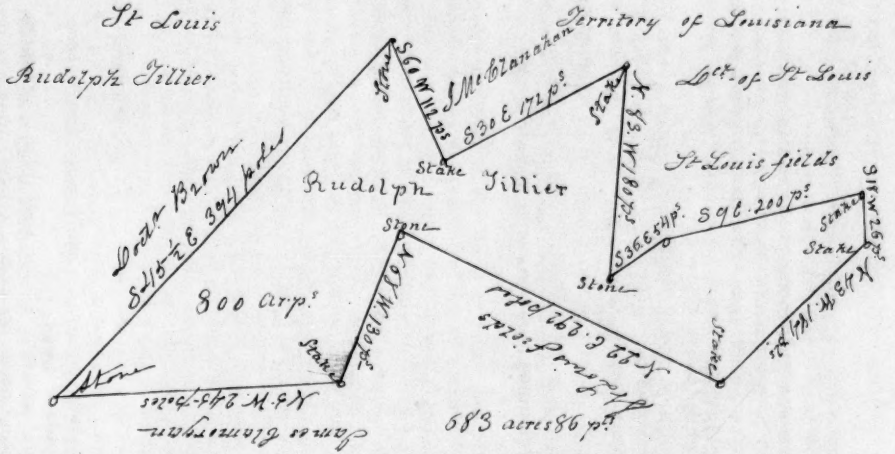
August 25th, 1806.

The board met agreeably to adjournment.

Present: The honorable John B. C. Lucas and Clement B. Penrose, esquires.

Rudolph Tillier, assignee of Benito Vasquez, jr., claiming 800 arpens of land, situate, district of Saint Louis, produces a concession from Charles D. Delassus to the said Benito, Antoine, Hypolite, Joseph, and Pierre Vasquez, the children of said Benito Vasquez, sr., for eight hundred arpens each, granted to them for the purpose of settling the

No 127. Pa. 8


St Louis
Rudolph Tillier
Territory of Louisiana
Lt. of St Louis
St Louis fields
Rudolph Tillier
Stake
Stone
Stake
800 Arps
Note. This Land is about 2 miles N.W. of St Louis.

said Benito Vasquez, junior, and educating his four younger brothers, who were then minors, and as a compensation for services rendered the Spanish government by Benito Vasquez, their father. Said concession, dated the 17th February, 1800, a survey of the aforesaid 800 arpens, dated the 27th February, 1806, and a deed of transfer of the same, executed by the said Benito Vasquez, jun'r, dated the 11th February, 1806.

Hyacinthe St. Cir being duly sworn, says, that Benito Vasquez, senior, the father of the said Benito and brothers, told him, the witness, about five or six years ago, that he had received a concession for his children of 800 arpens each; that the aforesaid Benito Vasquez, junior, was, at the time of obtaining said concession, of the age of twenty-one years and upwards; that his father, who was a Spaniard by birth, was a confidential subject of the officers of government; that he acted for some time as commandant by interim, and witness believes never received compensation for his services.

Charles Gratiot being also duly sworn, says, that the said Benito Vasquez, senior, is by birth a Spaniard, that he was the first militia captain, and *and* acted sometimes as commandant by interim, and never received any pecuniary compensation for his services.

The board reject this claim; they are satisfied that the said concession was granted at the time it bears date. They remark, that the grant is expressly given to the children, as is said in the body of it, as a compensation for the public services of their father, and that they may locate and establish it in two or three vacant places of the domain, when it shall be convenient.

Adjourned to to-morrow, 9 o'clock, A. M.

See book No. 1, pages 490, 491, 492, and 496.

MONDAY, *May 22d*, 1808.

Board met—Present, Clement B. Penrose and Frederick Bates, commissioners. Book No. 1, 491. See book 4, p. 502.

Rodolph Tillier, assignee of Benito Vasquez, junior, claiming 800 arpens of land.

Jacques Clamorgan sworn, says, that he knows that this land was given as a compensation to Benito Vasquez, junior, for services rendered to the Spanish government by his father; that said Benito, the father, was a confidential person under said government, and a Spaniard by birth. Laid over for decision.

Board adjourned till Thursday morning next, nine o'clock A. M.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See book No. 4, pages 62 and 67.

FRIDAY, *September 22d*, 1810.

Board met—Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Rodolph Tillier, assignee of Benito Vasquez, junior, claiming 800 arpens of land, see the book No. 1, page 491—book No. 4, page 67. It is the opinion of this board that this claim ought not to be confirmed. John B. C. Lucas, commissioner, declares, that he does not concur in opinion with the former board in the present case, respecting the satisfaction which the said former board expresses, that the concession was issued at the time it bears date.

Clement B. Penrose, commissioner, appeared at the board, and took his seat.

Board adjourned until Wednesday next, three o'clock, P. M.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes No. 4, pages 502 and 508.

TUESDAY, 9*th October*, 1832.

The board met pursuant to adjournment.

Present—L. F. Linn, W. Updike, F. R. Conway, commissioners. Decision No. 19, page 293.

The sons of Vasquez, Benito, Antoine, Hypolite, Joseph, and Pierre Vasquez, claiming 800 arpents each, under a concession, dated 17th February, 1800. See record book C, pages 474 and 475. Minutes, book No. 1, page 491; No. 4, pages 67 and 502. Produce a paper purporting to be an original concession, dated 17th of February, 1800, from C. D. Delassus, also a plat of survey, dated 7th of February, 1806, of 800 arpens.

Pascal Cerre, duly sworn, saith: That the signature to the concession is the handwriting of Delassus; that the signatures to the survey are in the handwriting of Mackay and Antoine Soulard.

On motion, the board adjourned until to-morrow, 10 o'clock, A. M.

L. F. LINN,
W. UPDIKE,
F. R. CONWAY.

See book No. 6, pp. 14, 17, 18, 19.

SATURDAY, *November 2d*, 1833.

The board met pursuant to adjournment. Present, Lewis F. Linn, A. G. Harrison, F. R. Conway, commissioners.

The sons of Vasquez, each claiming 800 arpens of land under a concession from Charles Dehault Delassus. See page 17. The board remark, that they can see no cause for entertaining the idea that the said concession was not issued at the time it bears date, as intimated in the minutes of the former commissioners.

The board are unanimously of opinion, that this claim ought to be confirmed to the said Benito, Antoine, Hypolite, Joseph, and Pierre Vasquez, or their legal representatives, according to the concession.

The board adjourned until to-morrow *next* at 9 o'clock, A. M.

L. F. LINN,
F. R. CONWAY,
A. G. HARRISON.

See book No. 6, pp. 292, 293, and 294.

No. 19. The sons of Vasquez claiming 800 arpens each.

To Don Carlos Dehault Delassus, lieutenant governor of Upper Louisiana.

SIR: Benito, Antoine, Hypolite, Joseph, and Pierre Vasquez, all of them sons of Don Benito Vasquez, captain of militia of this town, breveted by his Catholic Majesty, full of confidence in the generosity and benevolence of the government under which they are born, hope that you will be pleased to take into consideration the unfortunate situation in which they find themselves by the want of means of their family, which has been living for some time in distressing circumstances, and unable to give them the necessary education; therefore, wishing to procure to themselves, in the course of time, an independent existence, they think of forming an establishment which may one day insure their welfare. They flatter themselves, sir, that the services of their father will assure to them your protection, and the goodness of your heart will lead you to grant their demand; consequently they supplicate you to grant to each of them eight hundred arpens of land, in superficie, making altogether the quantity of four thousand arpens, which they wish to take in one or several places of the vacant lands of the King's domain. Favor which your petitioners presume to hope from your justice.

St. Louis, February 16, 1800.

BENITO VASQUEZ,
ANTOINE VASQUEZ,
HYPOLITE VASQUEZ,
JOSEPH VASQUEZ,
PIERRE VASQUEZ.

ST. LOUIS OF ILLINOIS, *February 17th*, 1800.

After seeing the precedent statement, and the laudable motives which animate the petitioners, and considering that their family is one of the most ancient in this country, and worthy of all the benevolence of government, as much for their personal merit as on account of the services [of the] father of the petitioners, I do grant to said petitioners, for them and their heirs, the land which they solicit, if it [is] not prejudicial to any body; and the surveyor, Don Antonio Soulard, shall put the interested party in possession of the quantity of land asked for, in one or two vacant places of the royal domain, after which he shall draw a plat which he shall deliver to the interested parties with his certificate, to serve them in obtaining the concession and title in form from the intendant general, to whom alone corresponds, by royal order, the distributing and granting all classes of lands of the royal domain.

CARLOS DEHAULT DELASSUS.

A true translation. JULIUS DE MUN.
St. Louis, Oct. 27, 1832.

RECORDER'S OFFICE,
St. Louis, Missouri, 24th February, 1845.

I certify that the foregoing pages contain a full, true, and complete

transcript of the records in this office, as far as I have been able to ascertain, which relates to the claim of Rudolph Tillier, under Benito Vasquez, junior, of eight hundred arpens of land therein mentioned and described.

F. R. CONWAY,
U. S. Recorder of land titles in the State of Missouri.

The plaintiff also gave in evidence the original concession and survey, which is in the words and figures following:

Original concession and survey.

Dn. Cs. Dehault de Lassus, lieutenant gouverneur de la Haute Louisiane:

Monsieur: Benito, Antoine, Hypolyte, Joseph et Pierre Vasquez, tous fils de Dn. Benito Vasquez, capitaine de milice de cette ville, breveté par Su M. C., pleine de confiance en la generosité et aux bontées du gouvernement sous le quel ils sont nés, esperent qu'il vous plaira prendre en consideration la situation malheureuse dans laquelle ils se trouvent par la peu de moyens de leur famille qui vit dans l'infortune depuis quelque tems, et qui est hors d'etat de leur faire donner une education necessaire, c'est pourquoi ils desirent de se procurer par la suite une existence independante en pensant à faire un etablissement qui puisse un jour leur assurer bien être, ils se flattent, monsieur, que les services de leur pere leur assurera votre protection, et que la bonté de votre cœur vous portera à leur accorder leur demande, ils vous suplient en consequence de leur accorder à chaqu'un d'eux huite cents arpents de terre en superficie, faisant ensemble la quantite de quatre mille arpents, lesquels ils desirent de prendre dans un ou plusieurs endroits sur les terres vacantes du domain du roi. Grace que les sup'ts osent espérer de votre justice.

St. Louis, 16 Fevrier, 1800.

BENITO VASQUEZ,
ANTOINE VASQUEZ,
HYP'LYTE VASQUEZ,
JOSEPH VASQUEZ,
PIERRE VASQUEZ.

Sn. Louis de Illinois, à 17 de Fevrero, de 1800.

V'to el esp'to precedente y los laudables motivos qe. animan los suplicantes, y considerando que su familia es una de las mas ancianas de pays, y acredora à los beneficios del gobierno tanto por su merito personal que por los ancianos servicios del padre del suplicante, concedo à los supp'te para los y sus herederos la tierra que solicita, si no perjudica à nadie; y el ag'or Don Antonio Soulard pondra los interesado en posesion de la cantidad de tierra que pide en un ô dos citios vacantes del dominio rl. lo que evacuado, formara plano, entregando à las partes este y certificacion, para que les sirva à obtener la concession y titulo en

forma del s'or intend'te g'l, à quien corresponde privativamente por rl. orden el repartir y conceder toda clase de tierras.

CARLOS DEHAULT DELASSUS.

[For plat, see original]

I do certify, that the above plot represents eight hundred arpens of land, French measure, situated in the district of St. Louis, Louisiana Territory, and surveyed by me at the request of the proprietor, who claims the same by virtue of a Spanish grant.

Given under my hand at St. Louis, this twenty-seventh day of February, year of our Lord eighteen hundred and six.

JAMES MACKAY.

Received for record, St. Louis, Feb'y 27th, 1806.

ANTOINE SOULARD,
Surveyor Gen'l Ter'y Louis'a.

United States survey of the confirmed tract.

The plaintiff likewise gave in evidence a United States survey of the confirmed tract of 800 arpents, in the words and figures following:

[For map, see original.]

SURVEYOR'S OFFICE,
St. Louis, 10th April, 1846.

The lines *ab*, *bc*, *cd*, *de*, *ef*, *fg*, *gh*, *hi*, *ik*, *kl*, and *la*, on the above plat, represent survey No. 3061, in townships 45 and 46 north, range 7 east, of the 5th principal meridian, confirmed to Benito Vasquez, junior, or his legal representatives, by the act of Congress of the 4th of July, 1836, according to decision No. 19 of the late board of commissioners; and the said survey is strictly conformable to the field notes thereof in this office, which were approved on the 29th March, 1842, by Jos. C. Brown, then surveyor general for Illinois and Missouri.

F. R. CONWAY,
Surveyor of the public lands in the States of Illinois and Missouri.

forma del s'or intend'te g'l, à quien corresponde privatívamente por rl. orden el repartir y conceder toda clase de tierras.

CARLOS DEHAULT DELASSUS.

[For plat, see original]

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[For map, see original.]

SURVEYOR'S OFFICE,
St. Louis, 10th April, 1846.

The lines *ab*, *bc*, *cd*, *de*, *ef*, *fg*, *gh*, *hi*, *ik*, *kl*, and *la*, on the above plat, represent survey No. 3061, in townships 45 and 46 north, range 7 east, of the 5th principal meridian, confirmed to Benito Vasquez, junior, or his legal representatives, by the act of Congress of the 4th of July, 1836, according to decision No. 19 of the late board of commissioners; and the said survey is strictly conformable to the field notes thereof in this office, which were approved on the 29th March, 1842, by Jos. C. Brown, then surveyor general for Illinois and Missouri.

F. R. CONWAY,
Surveyor of the public lands in the States of Illinois and Missouri.

The plaintiff then read in evidence the following deed, having duly proved the execution of the same, in the following words:

Deed of B. Vasquez, jr., to R. Tillier.

This indenture, made this eleventh day of February, in the year of our Lord eighteen hundred and six, be*twen* Benito Vasquez, of the town of St. Louis and *Teritory* of Louisiana, of the one part, and Rudolph Tillier, Camp Belle Fontain and said Territory, of the other part, witnesseth: That the said Benito Vasquez, for and in consideration of the sum of one hundred dollars, current money of the United States, to him in hand paid, the receipt whereof from the said Rudolph Tillier he doth hereby acknowledge, and doth altogether release and acquit the said Rudolph from the payment thereof, or of any part thereof, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Rudolph Tillier, his heirs and assigns, all the said Benito's right, title, and interest, claim, pretension, and demand, in and to a certain tract of land, not yet located or surveyed, granted to the said Benito by deed of concession bearing date the seventeenth day of February, 1800, containing eight hundred French acres, being, by the express terms of said concession, in consideration of various services rendered by the father of the said Benito to the Spanish government, for which he had received no manner of compensation: To have and to hold the said above bargained premises and land, with the appurtenances, unto him, the said Rudolph Tillier, his heirs and assigns, forever. And I, the said Benito, do hereby give full power, right, and authority, unto the said Rudolph, his heirs and assigns, to have, demand, sue for, and recover, to and for his own proper use, the said bargained and sold right, interest, and demand, in and to the said concession of eight hundred acres aforesaid, from the United States of America, before the board of commissioners, or elsewhere, or otherwise, at the pleasure of the said Rudolph.

In witness whereof, the said parties have hereunto set their hands, and affixed their seal*es*, *to* day and year first above written.

BENITO, FILS. [L. S.]

Signed, sealed, and delivered in presence of—

D. DELAUNAY,

CLEMENT B. PENROSE.

DISTRICT OF ST. LOUIS, *sct:*

Be*for* the subscriber, one of the judges of the court of common pleas of the district aforesaid, now appears Benito Vasquez, party to the above deed, who acknowledges the instrument of writing aforesaid to be his act and deed, and as such desires the same to be recorded.

Acknowledged before me, the day and year first above written.

D. DELAUNAY. [SEAL.]

DISTRICT OF ST. LOUIS, *ss:*

Recorded—book A, pages 361 and following—first day of November, year of our Lord one thousand eight hundred and six.

M. P. LEDUC, *Recorder*.

The plaintiff gave in evidence also an instrument purporting to be a transfer from said Tillier to Clement B. Penrose of said claim, which is in the words and figures following, the handwriting of Tillier having been admitted:

Transfer from Tillier to Penrose.

I do hereby assigne, transfer, sell, and set over, unto Clement B. Penrose, all my right, title, interest, property, claim, and demand, of, in, and to a certain concession purchased of Benito Vasquez, and assigned to me on the eleventh day of February, 1806, and *plott* of survey made for me, and dated 27th of February, 1806, for value received.

RODOLPH TILLIER.

TERRITORY OF MISSOURI, *county of St. Louis:*

Be it remembered, that this day personally appeared before me, Hamilton R. Gamble, deputy clerk of the circuit court for the county of St. Louis, Jeremiah Conner, and made oath that the signature to the above instrument is that of Rodolph Tillier, as he believes, from a comparison with other writing of the said Rodolph Tillier.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, this thirty-first day of October, in the year [L. S.] one thousand eight hundred and eighteen, and of the American independence the forty-third.

H. R. GAMBLE, *D. Cl'k.*
For A. GAMBLE, *Cl'k.*

MISSOURI TERRITORY, *St. Louis county, ss:*

I do hereby certify the within instrument in writing to be truly recorded, book H, pages 31 and following, this 31st October, 1818.

A. GAMBLE, *Clerk.*

The plaintiff gave in evidence also the deed of Clement B. Penrose to Mary B. Penrose and Anna H. W. Penrose, in the following words and figures:

Deed of C. B. Penrose to M. B. & A. H. W. Penrose.

This indenture, made this twentieth day of Febuary, in the year of our Lord one thousand eight hundred and twenty-three, between Clement Biddle Penrose, of the town and county of Saint Charles and State of Missouri, of the first part, and Mary Biddle Penrose and Anna Howard Wilkinson Penrose, of the same place, of the second part, witnesseth: that, for and in consideration of the sum of six hundred dollars, lawful money of the United States, the receipt whereof is hereby acknowledged, (as also other valuable considerations,) the said Clement, of the first part, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Mary and Anna, of the second part, in fee simple, all that unconfirmed tract or parcel of land situate, lying, and being three miles north of the town of St. Louis, in said State, containing eight hundred arpens, be the same more or less: Beginning at a stone, being the N. E. corner of a tract of land owned

by Josiah McClanahan, purchased of the estate of Gabriel Cerré; the N. W. corner of a tract of land owned by Rufus Easton, purchased also of the estate of said Cerré; the S. W. corner of a tract of land sold by C. B. Penrose to McKnight and Brady; thence, along the west line of said McKnight and Brady's tract, until it intersects the south line of a tract of land belonging to Alexander McNair, purchased of Morine's estate, which intersection is the southeast corner of a tract of land now in possession of Ab'm Gallatin, late the property of Jacques Clamorgan; thence, along the south line of said tract, till it intersects the east line of the outer St. Louis fields; thence, along said line to a stake; thence, eastwardly, until it intersects the west line of the inner St. Louis fields; thence, northwardly, to the N. W. corner of said fields; thence, eastwardly, along the north line of said fields, until it intersects the west line of said McClanagan's tract; thence, to its N. W. corner; thence, along the western line of said tract, to the place of beginning, as will more fully appear on the plat of survey made by James Mackay, in March, 1806, and recorded, with the other title papers, in the books of the recorder of land titles of the United States at St. Louis, purchased by Rudolph Tillier of Beneto Vasquez, jr., to whom the original concession was granted: To have and to hold the above described land to them, their heirs, executors, administrators, or assigns, together with all the privileges, advantages, and immunities thereto appertaining, or any otherwise belonging, to petition or sue for before any tribunal now appointed, or hereafter to be, the confirmation of the same, and to use all such means as may be requisite for its ultimate and full obtainment, to hold the same forever in fee simple.

In testimony whereof we have hereunto set our hands and seals, the day and year first above written.

CLEMENT B. PENROSE. [L. S.]

Signed, sealed, and delivered, in presence of—
RUFUS PETTIBONE,
CLEMENT B. PENROSE, JR.

STATE OF MISSOURI, *county of St. Charles, ss:*

On this twentieth day of February, in the year of our Lord one thousand eight hundred and twenty-three, before me, Rufus Pettibone, judge of the second judicial circuit in the State of Missouri, at the county of St. Charles aforesaid, came Clement B. Penrose, above named and described, to me well known, and acknowledged the foregoing instrument to be his free act and deed for the purposes therein contained.

RUFUS PETTIBONE.

STATE OF MISSOURI, *county of St. Louis, ss:*

I, Archibald Gamble, clerk of the circuit court, and ex officio recorder for the county of St. Louis, do hereby certify, that the within deed is truly recorded in my office, book L, page 277, this 24th February, 1823.

ARCHIBALD GAMBLE, *Clerk*.

Proof of defendant's possession.

The plaintiff thereupon proved that the defendant, at the commencement of this suit, was in possession of fifty-five acres of the land embraced within the said survey of Mackay for 800 arpents, and said United States survey of the confirmation; which said fifty-five acres are the same described in the verdict, and are not, nor is any part thereof, included in the confirmation to Watkins. And waived damages up to the time of trial, and proved sufficient present value, monthly, of said land to warrant the verdict as found. And she also admitted, by her counsel, that she claimed the undivided half of the premises only.

Testimony of F. R. Conway.

Frederick R. Conway, a witness for plaintiff, testified that he was one of the late board of commissioners that confirmed this claim; that the said original survey of Mackay, given in evidence by plaintiff, was the plat that Tillier claimed by, as he understood it; and that no other survey was exhibited to the commissioners, so far as he remembered, connected with this claim; that the survey was not noted in the tabular statement contained in the proceedings of said board, which omission, he thought, was by the mistake of the clerk; that the printed proceedings contain, as he supposes, the report as made by the board; that no plats were ever sent with any of those reports, nor was any copy sent of the record books of the office of the recorder of land titles; and nothing was sent on to Washington but what is contained in the proceedings of the board as printed.

Extract from commissioners' report.

The plaintiff also gave in evidence an extract from the report of the commissioners for ascertaining and adjusting the titles and claims to land in the Territory of Louisiana, communicated to the House of Representatives of the Congress of the United States, on 1st December, 1812, which extract is in the words and figures following:

Rodolph Tillier, assignee of Benito Vasquez, junr., claiming eight hundred arpents of land, situate in the district of St. Louis, produces to the board a concession from Charles Dehault Delassus, lieutenant governor, to the said Benito, Hypolite, Antoine, Joseph, and Pierre Vasquez, the children of Benito Vasquez, senr., for eight hundred arpents each, granted to them for the purpose of settling the said Benito Vasquez, junr., and educating his four younger brothers, who then were minors, and as a compensation for services rendered the Spanish government, by their father, Benito Vasquez. Said concession dated the 17th February, 1800, a survey of the aforesaid eight hundred arpents, dated the 27th February, 1806, and a deed of transfer of the same, executed by the aforesaid Benito Vasquez, junr., dated 11th February, 1806.

Testimony taken August 25th, 1806.—Hyacinth St. Cyr, sworn, says: That Benito Vasquez, sen., the father of the said Benito and brothers, told him, the witness, about five or six years ago, that he had received a concession for his children of eight hundred arpents

each; that the aforesaid Benito Vasquez, junr., was, at the time of claiming said concession, of the age of twenty-one years and upwards; that his father, who was a Spaniard by birth, was a confidential officer of government; that he acted for some time as commandant by interim, and witness believes never received any compensation for his services.

Charles Gratiot, sworn, says: That the said Benito Vasquez, senr., is by birth a Spaniard; that he was the first militia captain, and acted sometimes as commandant by interim, and never received any pecuniary compensation for his services.

Testimony taken May 22d, 1808.—Jacques Clamorgan, sworn, says: That he knows that this land was given as compensation to Benito Vasquez, junr., for services rendered to the Spanish Government by his father; that said Benito, the father, was a confidential person under said government, and a Spaniard by birth.

August 95, 1806.—Present, Lucas and Penrose, commissioners. The board reject this claim; they are satisfied that the said concession was granted at the time it bears date. They remark, that the grant is expressly given to the children, as is said in the body of it, as a compensation for the public services of the father, and that they may locate and establish it, in two or three vacant places of the domain, where it shall be convenient.

September 22d, 1810.—Present, Lucas and Bates, commissioners. It is the opinion of the board that this claim ought not to be confirmed. John B. C. Lucas, commissioner, declares that he does not concur in opinion with the former board in the present case, respecting the satisfaction which the said former board expresses, that the concession was granted at the time it bears date.

Antoine Vasquez, claiming eight hundred arpents of land, situate in the district of St. Louis, produces to the board the same concession as in the foregoing claims, and same testimony as aforesaid.

August 25, 1806.—Present, Lucas and Penrose, commissioners. The board reject this claim, and remark as aforesaid.

September 22d, 1810.—Present, Lucas, Penrose, and Bates, commissioners. It is the opinion of the board that this claim ought not to be confirmed. John B. C. Lucas, commissioner, declares as aforesaid.

Hypolite Vasquez, claiming eight hundred arpents of land, situate in the district of St. Louis, produces to the board the same concession as in the foregoing claims, and same testimony as aforesaid.

August 25, 1806.—Present, Lucas and Penrose, commissioners. The board reject this claim, and remark as aforesaid.

September 22, 1810.—Present, Lucas, Penrose, and Bates, commissioners. It is the opinion of the board that this claim ought not to be confirmed. John B. C. Lucas, commissioner, declares as aforesaid.

Joseph Vasquez, claiming eight hundred arpents of land, situate in the district of St. Louis, produces to the board the same concession as in the foregoing claims, and same testimony as aforesaid.

August 25, 1806.—Present, Lucas and Penrose, commissioners. The board reject this claim, and remark as aforesaid.

September 22, 1810.—Present, Lucas, Penrose, and Bates, commissioners. It is the opinion of the board that this claim ought not to be confirmed. John B. C. Lucas, commissioner, declares as aforesaid.

Pierre Vasquez, claiming eight hundred arpents of land, situate in the district of St. Louis, produces to the board the same concession as in the foregoing claims, and the same testimony as aforesaid.

August 25, 1806.—Present, Lucas and Penrose, commissioners. The board reject this claim, and remark as aforesaid.

September 22, 1810.—Present, Lucas, Penrose, and Bates, commissioners. It is the opinion of the board that this claim ought not to be confirmed. John B. C. Lucas, commissioner, declares as aforesaid.

Plaintiff's admission.

It was admitted by plaintiff, that she did not claim any part of the Watkins tract, as laid down on the plats used in evidence; and it was admitted by both parties, that the property in dispute in this action is worth much more than two thousand dollars.

The plaintiff also gave in evidence the letter of William H. Crawford, Secretary of the Treasury of the United States, from the files of the register of the land office at St. Louis, dated Treasury Department, 10th June, 1818, in the following words and figures:

Letter of the Secretary of the Treasury.

TREASURY DEPARTMENT, 10*th June*, 1818.

SIR: You are requested to instruct the recorder of land titles in the Missouri territory, to furnish to the receiver and register of the land district of St. Louis, a descriptive list of the land claims which have been presented and registered under the different acts of Congress for confirming the rights of individuals to lands which have not been confirmed, and that are situate within the said land district, with as little delay as practicable; also a list of the same kind, to the receiver and register of the district of Howard county, of all the land claims within said district, which in like manner have not been confirmed. For this service, he will be entitled to a reasonable compensation. You are also requested to direct the register and receiver of those districts, respectively, to withhold from sale all such lands until otherwise directed. It may be proper, however, to advise those officers, that this act is not to be considered as in any manner countenancing the idea that such claims are considered equitable, or that their being withheld from sale at this time ought to excite an expectation that they will ultimately receive the sanction of Congress. They are withheld from sale because the land claims have been, during the latter end of the late session of Congress, referred to the Secretary of the Treasury, with directions to report to the next session. The receiver and register should be instructed to make the subject of these observations known, for the purpose of preventing speculation on those land claims.

I have the honor to be, your most obt. svt.,

(Signed) WM. H. CRAWFORD.

JOSIAH MEIGS, Esq'r, *C. G. L. O.*

REGISTER'S OFFICE,
St. Louis, Mo., 9th April, 1846.

The within copy of a letter of the Treasury department, dated 10th June, 1818, addressed to Josiah Meigs, esq'r, C. G. L. O., is correctly copied, in every word and figure, from the copy of said document on file in this office.

TH. WATSON, *Register*.

The plaintiff also gave in evidence, taken from the files of the register of the land office aforesaid, the following paper, certified by said register, under date of April 9th, 1846.

Extract from register's office.

Claimants.	Reference.	Quantity, situation, remarks.
Rodolph Tillier, under Beneto Vasquez	Rep. p. 419	800 arpens, waters of Gingras.

LAND OFFICE, ST. LOUIS, MO.,
Register's Office, April 9th, 1846.

The foregoing is a true copy of an entry on the 13th page of a document on file in this office, entitled "Claims to lands in the old counties of St. Charles and St. Louis, including Howard, as to which Congress has made no decision;" to which document is appended a certificate as follows, to wit:

"OFFICE OF THE RECORDER OF LAND TITLES,
"*St. Louis, 10th July*, 1818.

"The foregoing is a list of claims entered in this office, and supposed to be situated or intended to be located within the old counties of St. Charles and St. Louis, (of which the county of Howard now forms a part,) as to which claims it is not known to me that Congress has made any decision. The claims of this class, within the exterior lines of the villages, (with the exception of the commons,) are not for the present communicated, as they seem to me to have been appropriated, generally, by the act of 13th June, 1812.

(Signed) "FREDERICK BATES."

Given under my hand the day and year above mentioned.

TH. WATSON, *Register*.

Defendant's evidence.—Testimony of L. Spencer.

The defendant then introduced Loren Spencer, recorder of land titles, who testified, that the plats, as laid down on the paper next hereinafter copied, both appear on one of the record books in his office, by the side of each other, on the same page, and the certificates or minutes herewith; and that said plats and minutes are fairly copied into the transcript of Tillier's claim shown him; which transcript was given in evidence by defendant, in the words and figures following:

Transcript of Tillier's claim.—Claim.

Rudolph Tillier gives notice to Jas. L. Donaldson, recorder of land titles, that he claims to hold 800 arpens of land, distant two miles from the town of St. Louis, being part of a grant to Benito, Antoine, Hypolite, Joseph, and Pierre Vasquez, for 4,000 arpens, by Charles Deht. Delassus, dated on the 17th of February, 1800, in recompence and as a reward for the services of Benito Vasquez, their father, to the King of Spain, and by said Benito, jun'r, assigned to this claimant.

Concession.

Dn. Charles Deh't Delassus, lieut. gouv'r de la Haute Louisiane.

Monsieur: Benito, Antoine, Hypolite, Joseph et Pierre, tous fils de Dn. Benito Vasquez, capitaine de milice de cette ville, brevete par S. M. C., pleine de confiance en la generosité et aux bontés du gouv'nte sous lequel ils sont nés, esperant qu'il vous plaira prendre en consideration la situation malheureuse dans laquelle ils se trouvent par le peu de moyens de leur famille qui vit dans l'infortune depuis quelque temps, et qui est hors d'etat de leur faire donner une education necessaire, c'est pourquoi ils desirent de se procurer par la suite une existence independente en pensant à faire un etablissem't qui puisse un jour leur assurer leur bien etat, ils se flattent, monsieur, que les services de leur pere leur assurera votre protection et que la bonté de votre cœur vous portera à leur accorder à chaqu'un d'eux 800 arps. de terre en superficie, faisant ensemble la quantité de 4000 arps., les quels ils desirent de prendre dans un ou plusieurs endroits sur les terres vacantes du dom'e du roy. Grace que les sup'es osent espere de votre juetice.

St. Louis, 16 Fevrier, 1800.

BENITO VASQUEZ,
ANTOINE,
HYPOLITE,
JOSEPH, and
PIERRE VASQUEZ.

St. Luis de Illinois, à 17th de Fevrero, de 1800.

V'to el esp'to precedente y los laudables motivos qe. animan los suplicantes, y considerando que su famillia es una de las mas ancianas d'el pays, y accredora à los beneficios d'el gobierno tanto por su merito personal que por los ancianos servicios d'el padre d'el suplicante, concedo al los supp'te para los y sus herederos, la tierra que solicita, si no perjudica à nadie, y el ag'or Dn. Antonio Soulard pondra los interesados en posesion de la cantidad de tierra que pide, en un ô dos sitios vacantes d'el do. real, lo que evacuado formara plano, entregando à las partes este y certificacion y titulo en forma d'el s'or intend'te gen'l, à quien corresponde privativament por rl. orden el repartir y conceder toda clase de tierras.

CARLOS DEHAULT DELASSUS.

Assignment.

This indenture, made this 11th day of February, in the year of our Lord 1806, between Benito Vasquez, of the town of St. Louis, and Territory of Louisiana, of the one part, and Rudolph Tillier, Camp Belle Fontaine, and said Territory, of the other part, witnesseth: That the said Benito Vasquez, for and in consideration of the sum of $100, current money of the United States, to him in hand paid, the receipt whereof, from the said Rudolph Tillier, he doth hereby acknowledge, and doth altogether release and acquit the said Rudolph from the payment thereof, or of any part thereof, hath given, granted, bargained, and sold, and by these presents doth give, grant, bargain, and sell, unto the said Rudolph Tellier, his heirs and assigns, all the said Benito's right, title, and interest, claim, pretension, and demand in and to a certain tract of land, not yet located or surveyed, granted to the said Benito by deed of concession bearing date the 17th day of February, 1800, containing 800 French acres, being by the express terms of said concession in consideration of various services rendered by the father of the said Benito to the Spanish Government, for which he had received no manner of compensation. To have and to hold the said above bargained premises and land, with the appurtenances, unto him, the said Rudolph Tillier, his heirs and assigns, forever. And I, the said Benito, do hereby give full power, right, and authority unto the said Rudolph, his heirs and assigns, to have, demand, sue for, and recover, to and for his own proper use, the said bargained and sold right, interest, and demand in and to the said concession of 800 arpents aforesaid, from the United States of America, before the board of commissioners, or elsewhere, or otherwise at the pleasure of the said Rudolph.

In witness whereof the said parties have hereunto set their hands and affixed their seals *to* day and year above written.

BENITO. [SEAL.]

Signed, sealed, and delivered in presence of—
D. DELAUNARY,
CLEMENT B. PENROSE.

DISTRICT OF ST. LOUIS, *Sct:*

Before the subscriber, one of the judges of the court of common pleas of the district aforesaid, now appears Benito Vasquez, party to the above deed, who acknowledges the instrument of writing aforesaid to be his act and deed, and as such desires the same to be recorded.

Acknowledged before me the day and year above written.

D. DELAUNAY. [L. S.]

[For plat, see original.]

Nota.—This land is about 2 miles W. N. W. of St. Louis.

I do certify that the above *plot* represents 800 arpens of land, French measure, siuated in the district of St. Louis, Louisiana Territory, and surveyed by me at the request of the proprietor, who claims the same by virtue of a Spanish grant.

Given under my hand at St. Louis, the 27th day of February, 1806.

(Signed,) JAMES MACKAY.

Received for record, St. Louis, the 27th of February, A. D. 1806.

Signed, ANTOINE SOULARD,
Surveyor General Territory of Louisana.

I do certify that the above *plot* represents 800 arpens of land, French measure, situated in the district of St. Louis, Louisiana Territory, and surveyed by me at the request of the proprietor, who claims the same by virtue of a Spanish grant.

Given under my hand at St. Louis, this 27th day of February, in the year of our Lord 1806.

Signed, JAMES MACKAY.

Received for record, St. Louis, February the 27th, 1806.

Signed, ANTOINE SOULARD,
Surveyor General Territory of Louisiana.

RECORDER'S OFFICE, ST. LOUIS, MISSOURI, *March* 27, 1846.

I do hereby certify the above and foregoing to be truly transcribed from pages 474 and 475 of record book C, as the same remains of record in this office.

LOREN SPENCER,
U. S. recorder of land titles in the State of Missouri.

Testimony of Joseph C. Brown.

Joseph C. Brown, a witness for defendant, testified that he had been a practical surveyor from 1817 or 1818, and a part of the time had been surveyor general, and had made the surveys in the neighborhood of the land claimed, and on examining the two plats on the document next above herein, he stated that the plat at the right hand would not include the land in controversy in this suit, and that the other, or left hand one, would include the whole of it; and that the left hand plat, or survey, is cut in two by the Watkins claim, which is an old confirmation; and that said two surveys embrace a portion of the same land in each.

Defendant also read in evidence the New Madrid certificate, so called, in favor of John Brooks, and the patent certificate, accompanied with the survey issued thereon, which are in the following words and figures:

New Madrid certificate.—No. 164.

OFFICE OF THE RECORDER OF LAND TITLES,
Saint Louis, November 4th, 1816.

I certify that a tract of seven hundred and nine arpens of land, situated Tywapity, in the county of New Madrid, which appears from the books

of this office to be owned by John Brooks, has been materially injured by earthquakes; and that in conformity to the provisions of the act of Congress of 17th February, 1815, the said John Brooks, or his legal representatives, is entitled to locate seven hundred and nine arpents on any of the public lands of the Territory of Missouri, the sale of which is authorized by law.

FREDERICK BATES.

SURVEYOR'S OFFICE, SAINT LOUIS,
April 10*th*, 1846.

The above is a correct copy of the original certificate (now on file in this office) of Frederick Bates, recorder of land titles in the Territory (now State) of Missouri, issued in conformity with the provisions of the act of Congress, therein referred to, of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

F. R. CONWAY,
Surveyor of the public lands in the States of Illinois and Missouri.

[*For plat, see original, page* 22.]

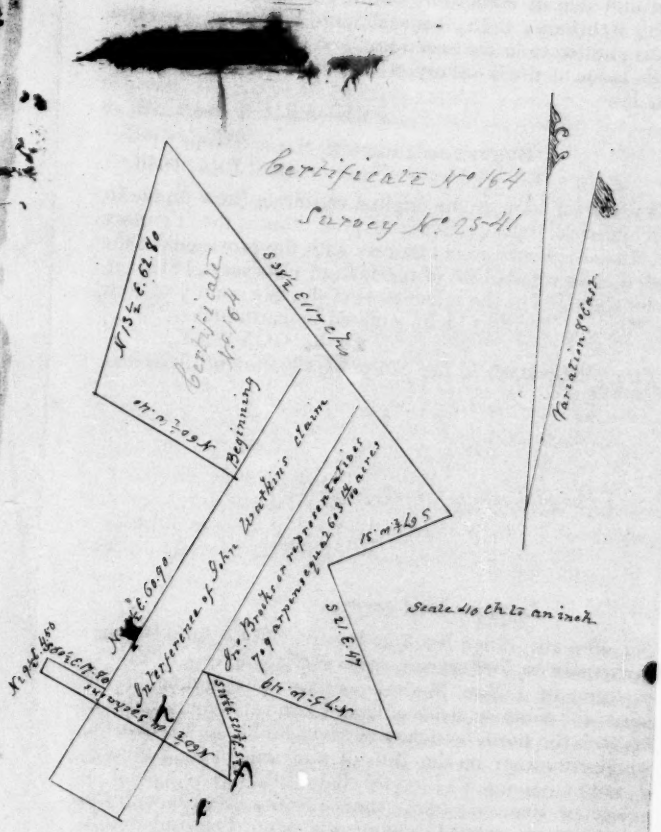
Location and survey.

Township No. 45 north, range No. 7 east, surveyed for John Brooks, or his legal representatives, 709 arpens, equal $603\frac{14}{100}$ acres.

Located by virtue of a New Madrid certificate: beginning at the northeast corner of the common fields of Grand Prairie, a stone; thence, north 60½ west, with the north boundary of said field lands, 40 chains to a stone, Glamorgan's corner on the line of said field lands; thence, north 13½ east, with Clamorgan's line, 62 chains 80 links to a stone in the west boundary of Penrose's tract; thence, south 38 east. with the westerly line of Penrose's tract 117 chains to a stone, Penrose's southwest corner; thence, south 67½ west, with McLanahan's line 31 chains, old Mulberry picket, from which a ———; thence, south 21 east, with another line of McLanahan's survey 47 chains, intersected the north boundary of the Saint Louis common fields, set post from which a ——; thence, north 75 west, with the north line of said field lands 49 chains to a stake, the northwest of the fields from which a hickory bush two in. dia. bears north 68½ 10 links, and a red oak bush 1½ in. dia. bears south 16 west 21 links; thence, south 28½ east, with the west boundary of the fields to an angle of the same 7 chains 94 links; thence, south 21¾ east, 7 chains 46 links, another small angle; thence, south ½° east, 7 chains 50 links, set post in the west boundary of said fields from which

pa. 24

No. 127
pa 24



a ———; thence, north 60½ west, 50 chains, intersected the east boundary of the field lands of the Grand Prairie, set post 4 chains 50 links south of a corner of said fields, from which a ———; thence, north 29½, with said line, 4 chains 50 links to a stone; thence, south 60½ east, 17 chains 80 links to a stone, another corner of field lands; thence, north 29½ east, 60 chains 90 links, to the beginning.

March, 1818. JOS. C. BROWN, *D. S.*

SURVEYOR'S OFFICE, ST. LOUIS, *Sept. 4th*, 1822.

I certify that the foregoing is a true copy of the survey on file in this office. WM. RECTOR.

To FREDERICK BATES, ESQ.,
Recorder of land titles for the Missouri Territory.

No. 308. OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, November 17, 1822.

I certify, that in pursuance of the act of Congress, passed the 17th day of February, 1815, a location certificate, No. 164, issued from this office, in favor of John Brooks, or his legal representatives, for seven hundred and nine arpens of land; that a location has been made, as appears by the plat of survey herewith, and that the said John Brooks, or his legal representatives, is entitled to a patent for the said tract, containing, according to said location, six hundred and three acres and $\frac{14}{100}$ths of an acre, in township No. 45 north of base line, range No. 7 east of fifth principal meridian. No. of survey 2541.

FREDERICK BATES.

Plaintiff's admission.

It was admitted by plaintiff, that all the right and estate in the land in controversy in this suit, acquired under said certificate and location of John Brooks, was duly passed and conveyed by sundry mesne conveyances to defendant, on 14th February, 1824. It was proved that one Brady, under whom defendant acquired title, had his mansion house adjacent to the land in controversy, (the 55 acres,) and occupied a part thereof before the year 1824, and the same had been ever since occupied; and that Bissell, the defendant, extended his improvements over the 55 acres as early [as] 1829 or 1830; that Bissell's house is on the tract confirmed to Penrose under Cerré, and his farm includes 30 or 40 acres of the Watkins claim.

Testimony of Joseph C. Brown.

Joseph C. Brown for defendant testified, that the claim of said location under John Brooks, was surveyed by him, and that in surveying it, he did not follow Mackay's survey; that said location is shaped by the surrounding claims, and that to survey it he had only to run on the lines of the surrounding claims; but that the lines of the survey for Brooks, and those of the survey given in evidence, are identical.

Proof, residence, and death of C. B. Penrose.

It was proved that C. B. Penrose lived at St. Louis, or near that place, west of the Mississippi, from 1815 till he died in 1830, with his daughter, the plaintiff in this action, who was twenty years old in the year 1820.

No other testimony was given in the case. The defendant then asked the following instructions, which the court refused to give, and each of them; to which refusal the defendant by his counsel excepted; which instructions are in the words and figures following:

Instructions refused.

1. That the land sued for in this action was not reserved from sale by the act of Congress of 3d March, 1811, in consequence of the filing of the claim of Rudolph Tillier, with the concession to Benito, Antoine, Hypolite, Joseph, and Pierre Vasquez, and other documents, with the recorder of land titles, as given in evidence in this case.

2. That the confirmation, by the board of commissioners, to Benito Antoine, Hypolite, Joseph, and Pierre Vasquez, given in evidence in this case, ratified by act of Congress of 4th July, 1836, did not vest any title in the land sued for in this action in the plaintiff.

3. That the plaintiff has shown no title on which she can recover of the defendant the land sued for in this action, or any part thereof.

4. That the plaintiff, if entitled to recover in this action, can recover only the undivided tenth of so much of the land sued for as the defendant was in possession of at the commencement of this suit.

5. If the jury find from the evidence that Rudolph Tillier, under whom the plaintiff in this case claims the land in question, filed his claim with the recorder of land titles, and, as a part of the evidence of his claim, filed two plats of the land claimed, one of which plats would embrace the land now in the defendant's possession, and the other would not embrace that land, then there is no reservation of the land in defendant's possession from sale, which would prevent the location of the land in question, under the certificate in favor of John Brooks or his legal representatives.

6. That the confirmation of the claim of Benito Vasquez and others, given in evidence by the plaintiff, being according to the concession, is in itself a rejection of the survey made by Mackay, which has been given in evidence; and under that confirmation there is no authority for a survey upon the land located under the certificate in favor of John Brooks, or his legal representatives.

7. That the survey given in evidence by plaintiff, of 800 arpents, made by Mackay in 1806, being a mere private survey made of a part of the public domain, in violation of an act of Congress prohibiting such surveys at that time under severe penalties, is not in law any part of the claim filed before the recorder of land titles, and cannot come in aid thereof, so as to work a reservation from sale, under the act of Congress of 3d March, 1811, of said 800 arpens.

The plaintiff then asked the following instruction, which the court

gave; to the giving which, the defendant, by his counsel, excepted. Which instruction is as follows:

Instruction given.

That the land included in the survey given in evidence, and which was made for Rudolph Tillier, assignee of Benito Vasquez, on the 27th of Feb'y, 1806, by James Mackay, and which was officially resurveyed in conformity to the act of Congress of the 4th of July, 1836, and which resurvey is numbered 3061, and was approved by Jos. C. Brown on the 29th March, 1842, was reserved from location and sale at the time McNight and Brady's location, under a New Madrid claim, was made; and, therefore, the location under said claim is invalid as against the title of said Vasquez, or those claiming through him, to the extent that the two claims cover the same land, and that the land included by both the surveys aforesaid is the land confirmed to Benito Vasquez, or his legal representatives, by the act of Congress of the 4th of July, 1836, and that the confirmation operated as a grant to said Vasquez, or his legal representatives; such being the legal effect of the acts of Congress, records, and title deeds given in evidence.

And the defendant prays the court to sign and seal this his bill of exceptions, which is done accordingly.

J. CATRON. [L. S.]

The following is a copy of the bond approved by the court and filed by the defendant on the 27th day of April, 1846.

Bond.

Know all men by these presents, that Lewis Bissell, as principal, and James Bissell, as security, are held and firmly bound unto Mary B. Penrose, in the just and full sum of five hundred dollars, for the payment of which, well and truly to be made, they bind themselves, their heirs, &c., by these presents. Sealed with their seals, and dated this 27th day of April, 1846.

The condition of the above obligation is such, that whereas the said Lewis Bissell has sued out a writ of error, returnable to the next term of the Supreme Court of the United States, and directed to the circuit court of the United States for the district of Missouri, in order to reverse a judgment rendered by said circuit court, in a certain action of ejectment in which the said Mary B. Penrose is plaintiff, and the said Lewis Bissell is defendant; now, if the said Lewis Bissell shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) LEWIS BISSELL, [L. S.]
JAMES BISSELL. [L. S.]

MISSOURI DISTRICT, *sct:*

[L. S.] The President of the United States to the honorable the judges of the circuit court of the United States for the district of Missouri, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea in said circuit court, between Mary B. Penrose, demandant, and Lewis Bissell, defendant, a manifest error hath happened, to the great damage of said defendant, as by his complaint appears; we being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court on the first Monday of December next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and forty six.

Issued at office in the city of St. Louis, under the seal of the circuit court of the United States for the district of Missouri, the day and year last aforesaid.

JOSEPH GAMBLE,
Clerk U. S. C. C. Missouri district.

MISSOURI DISTRICT, *sct:*

In obedience to the foregoing writ of error, I herewith transmit to the Supreme Court of the United States a certified transcript of the record and proceedings of the circuit court of the United States for the district of Missouri, in the plea in said writ of error mentioned.

JO. GAMBLE,
Clerk U. S. C. C. Mo. dist.

MISSOURI DISTRICT, *sct:*

The President of the United States, to Mary B. Penrose, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Missouri, wherein Lewis Bissell is plaintiff in error, and you, Mary B. Penrose, are defendant in error, to shew cause, if any there be, why judgment rendered against the said Lewis Bissell, as in said writ of error

mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John Catron, one of the justices of the Supreme Court of the United States, the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and forty-six.

J. CATRON, *Ass. Jus. S. C. U. S.*

I acknowledge due service of the foregoing citation, made this April 27th, 1846.

G. W. GOOD,
Att'y of record for Mary B. Penrose.

MISSOURI DISTRICT, *ss:*

I, Joseph Gamble, clerk of the circuit court of the United States for the district of Missouri, certify, that the foregoing is a full and true transcript of the record and proceedings of said court in a certain matter of controversy therein decided, wherein Mary B. Penrose, a citizen of the State of Louisiana, was plaintiff, and Lewis Bissell, a citizen of the State of Missouri, was defendant, as the same now remains of record and on file in my office.

In testimony whereof I hereto subscribe my name and affix the seal of said court, at office in the city of St. Louis, the second day of July, in the year one thousand eight hundred and forty-six.

[SEAL.]

JO. GAMBLE, *Clerk.*

United States Supreme Court.

LEWIS BISSELL, plff. in error,
vs.
MARY B. PENROSE, deft. in error.

And the said plaintiff in error, by his attorney, comes and says, that in the record and proceedings aforesaid, and in the rendition of judgment aforesaid, there is manifest error, in this, to wit, that the judgment aforesaid was rendered for the said defendant in error, whereas by the law of the land it should have been rendered for him, the said Lewis Bissell; and also, *secondly*, in this, to wit, that the court below refused to give to the jury the instructions asked for by the said Bissell; and also, *thirdly*, in this, to wit, that the court gave to the jury the instruction asked for by the said Mary B. Penrose, plaintiff below: *wherefore*, for these and other errors apparent in the said record and proceedings, the said plaintiff in error prays that the judgment aforesaid may be reversed and for nought held, and that he, the plaintiff in error, may be restored to what he hath lost thereby, &c.

PARDON D. TIFFANY,
Attorney for plaintiff in error.

Filed 29th August, 1846.